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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,311	09/25/2006	Alain Bernard Daouse	112701-754	6771
29157	7590	04/22/2009	EXAMINER	
K&L Gates LLP			ANDERSON, JERRY W	
P.O. Box 1135			ART UNIT	
CHICAGO, IL 60690			PAPER NUMBER	
			1794	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,311	<b>Applicant(s)</b> DAOUSE ET AL.	
	<b>Examiner</b> JERRY W. ANDERSON	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-44 is/are pending in the application.
- 4a) Of the above claim(s) 31-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-30 and 44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/20/2007</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group 1, claims 24-30 & 44 in the reply filed on 3/5/2009. is acknowledged.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 24 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The term "excess quantity . . . sufficient to prevent a coating gap" in claim 24 and 44 is a relative term which renders the claim indefinite. The term "excess quantity . . . sufficient to prevent a coating gap" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

5. The term "pipette . . . sufficiently small dimensions. . . able to be positioned close the bottom tip" in claim 24 and 44 is a relative term which renders the claim indefinite. The term " pipette . . . sufficiently small dimensions. . . able to be positioned close the bottom tip " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 24-30 and 44 rejected under 35 U.S.C. 103(a) as being unpatentable over Carter, P.H., et al., in view of Covert, C.J., et al., and further in view of Carhuff, P.W., et al.**

9. Carter ('367) discloses:

- a. Conventional ice cream cones, (line 31, col. 1, '367)
- b. The coating on the cones prevents them from becoming soggy when the ice cream is added, (lines 41-43, col.1, '367)
- c. Coating applied to interior of cone, (lines 8-9, col.2, '367)
- d. Deposit coating material . . . cones immediately before ice cream . . . chills and hardens the coating, (lines 2-5, col.2, '367)

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- e. Spray . . . covers the inside surface of the pastry cone with a layer of chocolate, (lines 51-53, col.3, '367)
  - f. Coating other than chocolate can be used, (lines 37-38, col.4, '367)
10. Covert ('696) discloses:
- g. Molds are filled by depositing machine, (lines 41-42, col.1, '696)
  - h. Nozzle may enter mold substantially to the bottom of the mold cavity, (lines 6-10, col.2, '696)
  - i. The suction is on when the nozzle meets the surface of the liquid in the mold cavity, (lines 1-5, col.2, '696)
  - j. The chocolate removed by suction to the tempering kettle . . . supply the depositing machine, (lines 28-30, col.2, '696)
  - k. The action may be relatively rapid and continuous, . . . high rate of production, and a uniform, high grade product, (lines 13-15, col.3, '696)
11. Carhuff ('575) discloses:
- l. nozzle head and body are guided and slide axially inside sleeve (§ 75, '575)
  - m. body and nozzle head are mobile relative to sleeve between 1<sup>st</sup> position, the dispensing position, (Fig. 4, § 76, 77 '575)
  - n. body and nozzle head are within cleaning chamber, wherein cleaning fluid circulates through nozzle in the opposite direction as dispensing flow, (Fig. 5, § 78, '575)
  - o.

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12. Regarding claim 24 and 44, Carter discloses the claimed invention, including, Spray . . . covers the inside surface of the pastry cone with a layer of chocolate, (lines 51-53, col.3, '367), but lack excess chocolate, removing excess chocolate, recycling chocolate, and back flushing the nozzle. Covert discloses molds are filled [with chocolate] by depositing machine, (lines 41-42, col.1, '696) Nozzle may enter mold substantially to the bottom of the mold cavity, (lines 6-10, col.2, '696) The suction is on when the nozzle meets the surface of the liquid in the mold cavity, (lines 1-5, col.2, '696) The chocolate removed by suction to the tempering kettle . . . supply the depositing machine, (lines 28-30, col.2, '696), but lacks back flushing of the nozzle, Carhuff ('575) discloses: nozzle head and body are guided and slide axially inside sleeve (§ 75, '575) body and nozzle head are mobile relative to sleeve between 1<sup>st</sup> position, the dispensing position, (Fig. 4, § 76, 77 '575) body and nozzle head are within cleaning chamber, wherein cleaning fluid circulates through nozzle in the opposite direction as dispensing flow. (Fig. 5, § 78, '575)

13. Carter, Covert and Carhuff are analogous art, Carter and Covert, are involved in the manufacture of chocolate covered ice cream cones, Carhuff is concerned with aseptic food dispensing, a necessary consideration in the mass production of food stuffs.

14. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the chocolate coated ice cream cone machine of Carter, to incorporate the use of excess chocolate, and the suction removal of the chocolate of Covert, and the cleaning of the nozzle and head of Carhuff in order to make a

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chocolate coated ice cream cone that does not turn soggy with the addition of ice cream, and result in a action may be relatively rapid and continuous, . . . high rate of production, and a uniform, high grade product, (lines 13-15, col.3, '696) Although Covert does not explicitly state that the chocolate recovered from the molds by the nozzle is recycled, he does state that it goes to the tempering kettle and thence to the depositing machines. (lines 28-30, col.2, '696) It would be obvious to one of ordinary skill in the art that the chocolate recovered in Covert was being recycled for further use. One of ordinary skill in the art would find it obvious that the back flushing of the dispensing head with a sanitizing liquid, performs substantially the same function in an equivalent manner as the applicant's back flushing of the spray nozzle with a gas.

15. Regarding claim 25, Carter, Covert and Carhuff disclose the claimed invention, as discussed above; including the back flushing of the nozzle sends any particulate matter back through the nozzle, i.e. In the same direction as the recycled chocolate.

16. Regarding claim 26, Carter, Covert and Carhuff disclose the claimed invention, as discussed above, including that the nozzle of Carhuff fits tightly in a sleeve, (Fig. 4 & 5, '575) such that any particulate matter that adheres to the nozzle will be removed during the retraction into the body.

17. Regarding claim 27, Carter, Covert and Carhuff disclose the claimed invention, as discussed above, including the nozzle of Carhuff has openings laterally arranged around the perimeter of the nozzle, and the nozzle is retracted into a chamber with an inlet for the admission of gaseous or liquid purges. (Fig.4 & 5, '575)

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18. Regarding claim 28, Carter, Covert and Carhuff disclose the claimed invention, as discussed above, including the container is a conventional ice cream cone, (line 31, col. 1, '367)

19. Regarding claim 29, Carter, Covert and Carhuff disclose the claimed invention, as discussed above, including the coating is chocolate. (lines 37-38, col.4, '367)

20. Regarding claim 30, Carter, Covert and Carhuff disclose the claimed invention, as discussed above, including food product is ice cream. (lines 41-43, col.1, '367)

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jwa

/KEITH D. HENDRICKS/  
Supervisory Patent Examiner, Art Unit 1794